



General Assembly

Amendment

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Offered by:

SEN. MUSTO, 22nd Dist.

REP. JUTILA, 37th Dist.

To: Subst. Senate Bill No. **248**

File No. 517

Cal. No. 348

"AN ACT CONCERNING PUBLIC WORKS PROJECTS AND THE THRESHOLD FOR COMPETITIVE BIDDING, SUBCONTRACTOR PREQUALIFICATION, CONSTRUCTION MANAGER AT-RISK PROJECT DELIVERY CONTRACTS, THE HIRING OF CONSULTANTS AND THE PURCHASING OF CERTAIN PROPERTY AND SERVICES."

1 After the last section, add the following and renumber sections and
2 internal references accordingly:

3 "Sec. 501. Section 4e-16 of the general statutes is repealed and the
4 following is substituted in lieu thereof (*Effective July 1, 2014*):

5 (a) Prior to entering into any privatization contract for the
6 privatization of a state service, [that is not currently privatized] that
7 was not performed by a nonstate entity, in whole or in part, prior to
8 June 1, 2010, and is currently being performed directly, in whole or in
9 part, by a state contracting agency, the state contracting agency shall
10 develop a cost-benefit analysis in accordance with the provisions of
11 subsection (b) of this section. [Such requirement shall not apply to a

12 privatization contract for a service currently provided, in whole or in
13 part, by a non-state entity.] Any affected party may petition the State
14 Contracting Standards Board for review of such privatization contract,
15 in accordance with the provisions of subsections (f) to (h), inclusive, of
16 this section.

17 (b) The cost-benefit analysis conducted by a state contracting agency
18 prior to entering into a privatization contract shall document the direct
19 and indirect costs, savings, and qualitative and quantitative benefits,
20 that will result from the implementation of such privatization contract.
21 Such cost-benefit analysis shall specify the schedule that, at a
22 minimum, shall be adhered to in order to achieve any estimated
23 savings. Any cost factor shall be clearly identified in such cost-benefit
24 analysis and supported by all applicable records and reports. The
25 department head of such state contracting agency shall certify that,
26 based on the data and information, all projected costs, savings and
27 benefits are valid and achievable. As used in this subsection, (1) "costs"
28 means all reasonable, relevant and verifiable expenses, including
29 salary, materials, supplies, services, equipment, capital depreciation,
30 rent, maintenance, repairs, utilities, insurance, travel, overhead,
31 interim and final payments and the normal cost of fringe benefits, as
32 calculated by the Comptroller; [. As used in this subsection,] (2)
33 "normal cost of fringe benefits" means the amount of contributions
34 required to fund the fringe benefits which are allocated to the current
35 year of service; and (3) "savings" means the difference between the
36 current annual direct and indirect costs of providing such service and
37 the projected, annual direct and indirect costs of contracting to provide
38 such services in any succeeding state fiscal year during the term of
39 such proposed privatization contract.

40 (c) (1) If such cost-benefit analysis identifies a cost savings to the
41 state of ten per cent or more, and such privatization contract will not
42 diminish the quality of such service, the state contracting agency shall
43 develop a business case, in accordance with the provisions of
44 subsection (d) of this section, in order to evaluate the feasibility of

45 entering into any such contract and to identify the potential results,
46 effectiveness and efficiency of such contract.

47 (2) If such cost-benefit analysis identifies a cost savings of less than
48 ten per cent to the state and such privatization contract will not
49 diminish the quality of such service, the state contracting agency may
50 develop a business case, in accordance with the provisions of
51 subsection (d) of this section, in order to evaluate the feasibility of
52 entering into any such contract and to identify the potential results,
53 effectiveness and efficiency of such contract, provided there is a
54 significant public policy reason to enter into such privatization
55 contract. Any such business case shall be approved in accordance with
56 the provisions of subdivision (4) of subsection (h) of this section.

57 (3) If any such proposed privatization contract would result in the
58 layoff, transfer or reassignment of one hundred or more state agency
59 employees, after consulting with the potentially affected bargaining
60 units, if any, the state contracting agency shall notify the state
61 employees of such bargaining unit, after such [cost benefit] cost-benefit
62 analysis is completed. Such state contracting agency shall provide an
63 opportunity for said employees to reduce the costs of conducting the
64 operations to be privatized and provide reasonable resources for the
65 purpose of encouraging and assisting such state employees to organize
66 and submit a bid to provide the services that are the subject of the
67 potential privatization contract. The state contracting agency shall
68 retain sole discretion in determining whether to proceed with the
69 privatization contract, provided the business case for such contract is
70 approved by the board.

71 (d) Any business case developed by a state contracting agency for
72 the purpose of complying with subsection (c) of this section shall
73 include: (1) The [cost benefit] cost-benefit analysis as described in
74 subsection (b) of this section, (2) a detailed description of the service or
75 activity that is the subject of such business case, (3) a description and
76 analysis of the state contracting agency's current performance of such
77 service or activity, (4) the goals to be achieved through the proposed

78 privatization contract and the rationale for such goals, (5) a description
79 of available options for achieving such goals, (6) an analysis of the
80 advantages and disadvantages of each option, including, at a
81 minimum, potential performance improvements and risks attendant to
82 termination of the contract or rescission of such contract, (7) a
83 description of the current market for the services or activities that are
84 the subject of such business case, (8) an analysis of the quality of
85 services as gauged by standardized measures and key performance
86 requirements including compensation, turnover, and staffing ratios, (9)
87 a description of the specific results-based performance standards that
88 shall, at a minimum be met, to ensure adequate performance by any
89 party performing such service or activity, (10) the projected time frame
90 for key events from the beginning of the procurement process through
91 the expiration of a contract, if applicable, (11) a specific and feasible
92 contingency plan that addresses contractor nonperformance and a
93 description of the tasks involved in and costs required for
94 implementation of such plan, and (12) a transition plan, if appropriate,
95 for addressing changes in the number of agency personnel, affected
96 business processes, employee transition issues, and communications
97 with affected stakeholders, such as agency clients and members of the
98 public, if applicable. Such transition plan shall contain a reemployment
99 and retraining assistance plan for employees who are not retained by
100 the state or employed by the contractor. If the primary purpose of the
101 proposed privatization contract is to provide a core governmental
102 function, such business case shall also include information sufficient to
103 rebut the presumption that such core governmental function should
104 not be privatized. Such presumption shall not be construed to prohibit
105 a state contracting agency from contracting for specialized technical
106 expertise not available within such agency, provided such agency shall
107 retain responsibility for such core governmental function. For the
108 purposes of this section, "core governmental function" means a
109 function for which the primary purpose is (A) the inspection for
110 adherence to health and safety standards because public health or
111 safety may be jeopardized if such inspection is not done or is not done
112 in a timely or proper manner, (B) the establishment of statutory,

113 regulatory or contractual standards to which a regulated person, entity
114 or state contractor shall be held, (C) the enforcement of statutory,
115 regulatory or contractual requirements governing public health or
116 safety, or (D) criminal or civil law enforcement. If any part of such
117 business case is based upon evidence that the state contracting agency
118 is not sufficiently staffed to provide the core governmental function
119 required by the privatization contract, the state contracting agency
120 shall also include within such business case a plan for remediation of
121 the understaffing to allow such services to be provided directly by the
122 state contracting agency in the future.

123 (e) Upon the completion of such business case, the state contracting
124 agency shall submit the business case to the State Contracting
125 Standards Board. For any privatization contract with a projected cost
126 that exceeds one hundred fifty million dollars annually or six hundred
127 million dollars over the life of such contract, the state contracting
128 agency shall also submit such business case to the Governor, the
129 president pro tempore of the Senate, the speaker of the House of
130 Representatives, and any collective bargaining unit affected by the
131 proposed privatization contract.

132 (f) (1) There shall be a privatization contract committee of the State
133 Contracting Standards Board that shall review, evaluate, issue
134 advisory reports and make recommendations on business cases
135 submitted to the board by any state contracting agency. Such
136 privatization contract committee shall consist of five members of the
137 State Contracting Standards Board. Such members shall be appointed
138 by the chairperson of the board and consist of both gubernatorial and
139 legislative appointments, have not more than three members from any
140 one political party, and at least one member of such committee shall
141 have expertise in the area that is the subject of such proposed contract.
142 The chairperson of the board, or the chairperson's designee shall serve
143 as the chair of the privatization contract committee.

144 (2) Upon receipt of any such business case from a state contracting
145 agency, the State Contracting Standards Board shall immediately refer

146 such business case to such privatization contract committee. The
147 privatization contract committee shall employ a standard process for
148 reviewing, evaluating and approving any such business cases. Such
149 process shall include due consideration of: (A) The cost-benefit
150 analysis developed by the state contracting agency, (B) the business
151 case developed by the state contracting agency, including any facts,
152 documents or other materials that are relevant to such business case,
153 (C) any adverse effect that such privatization contract may have on
154 minority, small and women-owned businesses that do, or are
155 attempting to do business with the state, and (D) the value of having
156 services performed in the state and within the United States.

157 (3) The privatization committee shall evaluate the business case and
158 submit the committee's evaluation to the State Contracting Standards
159 Board for review and approval. During the review or consideration of
160 any such business case, no member of the board shall engage in any
161 ex-parte communication with any lobbyist, contractor or union
162 representative. Unless otherwise provided in this section, a majority
163 vote of the board shall be required to approve any such business case.

164 (4) The business case for a privatization contract to provide a core
165 governmental function may be approved by a two-thirds vote of the
166 board, provided the state contracting agency has provided sufficient
167 evidence to rebut the presumption contained in subsection (d) of this
168 section and there is a significant policy reason to approve such
169 business case. In no such case shall the insufficient staffing of a state
170 contracting agency constitute a significant policy reason to approve a
171 business case for a privatization contract to provide a core
172 governmental function.

173 (g) Each state contracting agency that submits a business case to the
174 board for review shall submit to the board all information, documents
175 or other material required by the privatization contract committee to
176 complete its review and evaluation of such business case.

177 (h) (1) Not later than sixty days after receipt of any business case,

178 the State Contracting Standards Board shall transmit a report detailing
179 its review, evaluation and disposition regarding such business case to
180 the state contracting agency that submitted such business case and, in
181 the case of a privatization contract with a projected cost of one
182 hundred fifty million dollars or more annually, or six hundred million
183 dollars or more over the life of the contract, concomitantly transmit
184 such report to the Governor, the president pro tempore of the Senate,
185 the speaker of the House of Representatives and any collective
186 bargaining unit affected by the proposed privatization contract. Such
187 sixty-day period may be extended for an additional thirty days upon a
188 majority vote of the board or the privatization contract committee and
189 for good cause shown.

190 (2) The board's report shall include the business case prepared by
191 the state contracting agency, the evaluation of the business case
192 prepared by the privatization contract committee, the reasons for
193 approval or disapproval, any recommendations of the board and
194 sufficient information to assist the state contracting agency in
195 determining if additional steps are necessary to move forward with a
196 privatization contract.

197 (3) If the State Contracting Standards Board does not act on a
198 business case submitted by a state contracting agency within sixty
199 days of receipt of such business case, such business case shall be
200 deemed approved, except that no business case may be approved for
201 failure of the board to meet.

202 (4) In the case of a business case developed pursuant to subdivision
203 (2) of subsection (c) of this section, a two-thirds vote of the board shall
204 be required for approval of such privatization contract.

205 (5) Any state contracting agency may request an expedited review
206 of a business case submitted to the board if there is a compelling public
207 interest for such expedited review. If the board approves the agency's
208 request for such an expedited review, such review shall be completed
209 not later than thirty days after receipt of such request. If the board fails

210 to complete an expedited review within thirty days of receipt of a
211 request that was approved by the board, such business case shall be
212 deemed to be approved.

213 (i) A state contracting agency may publish notice soliciting bids for a
214 privatization contract only after the board approves such business
215 case, provided any privatization contract that is estimated to cost in
216 excess of one hundred fifty million dollars annually or six hundred
217 million dollars or more over the life of the contract shall also be
218 approved by the General Assembly prior to the state contracting
219 agency soliciting bids for such contract. The General Assembly may
220 approve any such contract as a whole by a majority vote of each house
221 or may reject such agreement as a whole by a majority vote of either
222 house. If the General Assembly is in session, it shall vote to approve or
223 reject such contract not later than thirty days after such state
224 contracting agency files such contract with the General Assembly. If
225 the General Assembly is not in session when such contract is filed, it
226 shall be submitted to the General Assembly not later than ten days
227 after the first day of the next regular session or special session called
228 for such purpose. The contract shall be deemed approved if the
229 General Assembly fails to vote to approve or reject such contract
230 within thirty days after such filing. Such thirty-day period shall not
231 begin or expire unless the General Assembly is in regular session. For
232 the purpose of this subsection, any contract filed with the clerks within
233 thirty days before the commencement of a regular session of the
234 General Assembly shall be deemed to be filed on the first day of such
235 session.

236 (j) Each state contracting agency shall submit, in writing, to the State
237 Contracting Standards Board, any proposed amendment to a board-
238 approved business case in order that the board may review and
239 approve of such proposed amendment. The board may approve or
240 disapprove of any such proposed amendment not later than thirty
241 days after receipt of such proposed amendment by the same vote that
242 was required for approval of the original business case. If the board

243 fails to complete its review within thirty days of receipt of such
244 proposed amendment, such amendment shall be deemed approved.

245 (k) Not later than thirty days after a decision of the board to
246 approve a business case, any collective bargaining agent of any
247 employee adversely affected by such proposed privatization contract
248 may file a motion for an order to show cause in the superior court for
249 the judicial district of Hartford on the grounds that such contract fails
250 to comply with the substantive or procedural requirements of this
251 section. A ruling on any such motion may: (1) Deny the motion; (2)
252 grant the motion if the court finds that the proposed contract would
253 substantively violate the provisions of this section; or (3) stay the
254 effective date of the contract until any substantive or procedural defect
255 found by the court has been corrected.

256 (l) (1) The board may review additional existing privatization
257 contracts and shall review not less than one contracting area each year
258 that is currently privatized. During the review of any such
259 privatization contract, no member of the board shall engage in any ex-
260 parte communication with any lobbyist, contractor or union
261 representative. For each such privatization contract selected for review
262 by the board, the appropriate state contracting agency shall develop a
263 cost-benefit analysis in accordance with subsection (b) of this section.
264 In addition, any affected party may petition the board for review of
265 any existing privatization contract, in accordance with the provisions
266 of subsections (f) to (h), inclusive, of this section.

267 (2) If such cost-benefit analysis identifies a ten per cent or more cost
268 savings to the state from the use of such privatization contract and
269 such contract does not diminish the quality of the service provided,
270 such state contracting agency shall develop a business case for the
271 renewal of such privatization contract in accordance with the
272 provisions of subsections (d) and (e) of this section. The board shall
273 review such contract in accordance with the provisions of subsections
274 (f) to (h), inclusive, of this section and may approve such renewal by
275 the applicable vote of the board, provided any such renewal that is

276 estimated to cost in excess of one hundred fifty million dollars
277 annually or six hundred million dollars or more over the life of the
278 contract shall also be approved by the General Assembly prior to the
279 state contracting agency renewing such contract. If such renewal is
280 approved by the board and the General Assembly, if applicable, the
281 provisions of subsection (j) of this section shall apply to any proposed
282 amendment to such contract.

283 (3) If such cost-benefit analysis identifies a cost savings to the state
284 of less than ten per cent, such state contracting agency shall prepare a
285 plan to have such service provided by state employees and shall begin
286 to implement such plan, provided: (A) While such plan is prepared,
287 but prior to implementation of such plan, such state contracting
288 agency may develop a business case for such privatization contract, in
289 accordance with the provisions of subsection (d) of this section, that
290 achieves a cost savings to the state of ten per cent or more. Any such
291 business case shall be reviewed by the board in accordance with the
292 provisions of subsections (f) to (h), inclusive, of this section, and may
293 be approved by the applicable vote of the board; (B) such privatization
294 contract shall not be renewed with the vendor currently providing
295 such service unless: (i) There exists a significant public interest in
296 renewing such contract, and (ii) such renewal is approved by a two-
297 thirds vote of the board; (C) the state contracting agency may enter
298 into a contract with a term of one year or less for the provision of such
299 service until such state contracting agency implements such plan; and
300 (D) the procedure for the transfer of funds from the General Fund, as
301 described in section 4-94, may be utilized to allocate necessary
302 resources for the implementation of the provisions of this subdivision.

303 (4) Notwithstanding the provisions of subdivision (3) of this
304 subsection, the renewal of a privatization contract with a nonprofit
305 organization shall not be denied if the cost of increasing compensation
306 to employees performing the privatized service is the sole cause for
307 such contract not achieving a cost savings to the state of ten per cent or
308 more.

309 (m) The Office of Policy and Management, in consultation with the
310 State Contracting Standards Board, shall: (1) Develop policies and
311 procedures, including templates for use by state contracting agencies
312 for the development of a cost-benefit analysis, as described in
313 subsection (b) of this section, and (2) review with each state contracting
314 agency the budgetary impact of any such privatization contract and
315 the need to request budget adjustments in connection with any such
316 privatization contract.

317 (n) The State Contracting Standards Board, in consultation with the
318 Department of Administrative Services, shall: (1) Recommend and
319 implement standards and procedures for state contracting agencies to
320 develop business cases in connection with privatization contracts,
321 including templates for use by state contracting agencies when
322 submitting business cases to the board, and policies and procedures to
323 guide state contracting agencies to complete such business cases, and
324 (2) develop guidelines and procedures for assisting state employees
325 whose jobs are affected by a privatization contract.

326 (o) Notwithstanding the provisions of subsections (a) and (i) of this
327 section, a state contracting agency may enter into a privatization
328 contract without development of a cost-benefit analysis or approval of
329 a business case by the State Contracting Standards Board if (1) the state
330 contracting agency finds that a privatization contract is required (A)
331 due to an imminent peril to the public health, safety or welfare, and (B)
332 the agency states, in writing, its reasons for such finding; and (2) the
333 Governor approves such finding, in writing.

334 (p) Prior to entering into or renewing any privatization contract for
335 a state service that was performed by a nonstate entity, in whole or in
336 part, prior to June 1, 2010, the state contracting agency shall, within
337 available appropriations, evaluate such contract to determine if
338 continuing to contract for the service is the most cost-effective method
339 of delivering such service, by determining the costs, as defined in
340 subsection (b) of this section, of such service. The state contracting
341 agency shall perform such evaluation in accordance with a template

342 prescribed by the Secretary of the Office of Policy and Management
343 and such evaluation shall be subject to verification by the secretary.
344 The secretary may waive the requirement for an evaluation of cost-
345 effectiveness under this subsection upon a finding by the secretary that
346 exigent or emergent circumstances necessitate such waiver.

347 [(p)] (q) Nothing in this section shall be construed to apply to
348 procurements that involve the expenditure of federal assistance or
349 federal contract funds, provided federal law provides applicable
350 procurement procedures that are inconsistent with the requirements of
351 this section."

This act shall take effect as follows and shall amend the following sections:		
Sec. 501	July 1, 2014	4e-16